From: Mark Hotchkiss
To: Microsoft ATR
Date: 12/2/01 5:44pm
Subject: Reject Proposed Settlement with Microsoft

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U.S. Department of Justice
601 D Street NW
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Pursuant to the Tunney Act, members of the public have an opportunity to comment on the proposed settlement between the U.S Department of Justice and Microsoft. Please find the documents attached which contain comments from:

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"Dealing with Microsoft's Policy of Deception"

I. The Record

From the record of The United States Court of Appeals for the D.C. Circuit decided June 28, 2001; No. 00-5212.

From section: II. Monopolization; B. Anticompetitive Conduct; 5. Java; c. Deception of Java Developers: pp. 56; paragraph 2:

"Finally, other Microsoft documents confirm that Microsoft intended to deceive Java developers, and predicted that the effect of its actions would be to generate Windows-dependent Java applications that their developers believed would be cross-platform; these documents also indicate that Microsoft's ultimate objective was to thwart Java's threat to Microsoft's monopoly in the market for operating systems."

From paragraph 3:

"Unsurprisingly, Microsoft offers no procompetitive explanation for its campaign to deceive developers. Accordingly, we conclude this conduct is exclusionary, in violation of Section 2 of the Sherman Act."

II. Challenge to Developers

Software developers have the wonderful opportunity to create incredibly powerful tools for people utilizing nothing but their brains, a piece of hardware, and a well documented platform language or API to guide them. Indeed, many admire Bill Gates and give him credit for doing just that. But tragically, the policies of deception that his company has been convicted of, have already eroded much of the fertile ground on which he and his company built their foundation. If the Court accepts the settlement that the Department of Justice has proposed, that ground will be washed away for any developer hoping to gain significant access to users without that developer having to pay or depend on Microsoft in some way. To PC software developers the market has not been free for a long time. Given Microsoft's scorched earth criminal past, Internet software is the next technology to get locked up from creative people.

III. They Own All of the Stages

Technical merit, quality, and price should be some of the primary measures by which software products succeed in a marketplace, if it is a relatively free one. Ever since Microsoft has gained a monopoly position in the operating system market; the "stage" on which a developers must perform, Microsoft has elevated the measure of whether it will increase their own market share over all other measures. Intel owns a good portion of the "theaters", but will host most any production. By contrast, Microsoft owns virtually all of the stages and claims imminent domain to them from competing productions whenever they decide to produce their own show, as long as they can increase market share to that new audience.

But of course, questionable priorities and being a monopoly is not against the law. But when Microsoft decides to enter a new market, rather than using the methods any other player on the stage would have at their disposal to use to win an audience, they can control the lights, props, background, special effects, even funding, and can turn any developer's production into an unintentional farce, all without the members of the audience knowing it.

Borland, Quarterdeck, and Netscape are but a few companies who have had the chance to bring the issue of Microsoft's habitual secret sabotaging of their applications before the court. But this method of dealing with competition is usually saved as a last resort and is done very subtly. Microsoft has very distinct and regular script on how it deals with competition.

IV. Embrace and Smother

At the heart of the case before the court was Microsoft's deceptive technique launched against Netscape. From the court record, Microsoft's own Paul Maritz, called it "embrace, extend, extinguish" or "embrace and smother" corroborated by several Intel executives. Microsoft makes its competitors think they like the show, read the script and promise to produce it, and kill it before it opens to make room for a production they have been rehearsing in the wings. Sometimes, before the competitor ever got their first check.

V. Embrace and Pollute

Sun's Java "resurfaced" the stage with an set of tools that could even be extended to the Internet and beyond. Developers could cultivate their productions for free in different theaters and produce "road shows" on all kinds of stages. But because Microsoft was no longer in direct control of what was seen on the stage and could not continue to charge fees that suited them, they resorted to sabotage as reflected in the court record.

They tried punching holes under Sun's performing platform by polluting it with a "Windows only" advantage and have been convicted for it. Because this approach did not achieve their intent, they deployed their third anti-competitive method.

VI. Replicate and Extend

Today, the anti-competitive method of choice is a variation of "embrace, extend, and extinguish". It is what was used against Apple when Windows was first introduced. Microsoft is in the process of virtually replicating Java in their new language C# (C Sharp). A glance

at any sample code can convince almost anyone that the "new, innovative" language is a complete knock-off of Java. But Microsoft maintains that it has nothing to do with Sun's creation.

The fundamental difference is, it won't play on anything but Microsoft's stages. As an expected action, Microsoft will no longer make any effort to accommodate a Java stage in their latest monopoly production of Windows XP. Developers who prefer Sun's version of how the stage is equipped will have ask the audience to help them set it up by having to download components that were previously supplied by the stage manager. This is something Microsoft claims will "increase choice for consumers".

How can these actions be perceived as competitive?

VII. Bundling When It's Convenient

Microsoft has used the deceptive reasoning that bundling application products with the operating system is simply a matter of convenience. But in effect, they mean their convenience, not the consumer's. They only bundle products when they don't already own the market for that application software.

Until recently, word processing and spreadsheet applications were easily the first reasons to buy a computer. As a matter of consumer convenience, why doesn't Microsoft bundle MS Office the way it did Internet Explorer? These applications are still the main reasons people buy computers? The answer is easy. They virtually own the office applications market now and can charge very high prices and keep their customers locked in by their proprietary document formats. They wouldn't kill their cash cow in the name of giving the customer what they really want and have touted as their reason for bundling.

They don't own the market for video software yet, but with absolutely no hindrance from the court, they have bundled Windows Media Player with Window XP and will eliminate RealPlayer in no time at all. Little of their success will be decided on technical merit, quality, or price.

If this is not evidence of leveraging a monopoly market to gain another, what is? The proposed settlement does nothing to stop such blatant violations of the Sherman Act.

VIII. Control of Hardware Vendors

As a matter of research, contact one of the major PC distributors such as IBM, Dell, or Gateway, and attempt to purchase one of their high volume, low cost package PCs, but ask that you don't want Windows XP pre-installed for whatever reason. XP's default configuration of exposed IP sockets is a legitimate security concern that users should be able to reject it, but any reason should be valid. Then explain you that want a discount (any amount) for the absence of any Microsoft products. You will find that they will not accommodate you. Linux users have to indirectly pay Microsoft to get reasonable prices on the same hardware. How can this be termed a competitive environment and how does the settlement before the court remedy this situation?

IX. Relative Exposure of the APIs

The way the settlement is worded, Microsoft will be able to greatly

limit the access developers have to make their products successful. Microsoft will still be able to protect their arsenal of secret weapons used on their platform. Exposure is a relative term and the settlement reveals far too little for it to be effective in improving competition. Hiding their malicious intent in millions of lines of code to a few inspectors to see will be a cinch. They can always build another "substage" under the one the inspectors see to achieve this.

X. Giving Up

Nothing hurts a non-Microsoft developer more that hearing friends and family conclude that Microsoft software and services must be the best based solely on the fact that they have taken over so many markets. Terms like "sour grapes" and "quit your whining" cut deeply into a developer's incentive to create products that may not run on Windows only. As they should, PC users attempt to equate technical merit, quality, and price with proportional success. This is of course, not the

case with Microsoft as stage manager. Users can't see what sort of treachery and deception takes place in a developer's attempt to get on the stage, let alone, get the lights to come up on their show. Explaining the stagecraft is rarely possible and is generally futile. Developers interested in a level playing field have been hoping that the

court would understand the ropes and backstage operations that keep them

off of the stages. So far, that expectation has been dashed.

Microsoft deceives and cheats in every way possible gain market share. A developer is faced with a simple choice at this point: Microsoft's way, or the highway. Help entrench their monopoly and reduce choice in virtually every sector of computing, or get out of the business.

If the DOJ settlement is accepted, it will only be a matter of time before a significant portion of the development community decides to take the latter option. The settlement contains no remedy and in fact, legitimizes Microsoft's criminal anti-competitive behavior.

XI. Effective Remedies

Even though a remedy of separation of the operating system and application software business units has been cast out as a possibility, it would have been the most effective and expeditious way to remove the incentive for Microsoft to leverage it's monopoly and reduce customer and developer choices.

Short of that, Microsoft should be forced to sell its language business,

and the proceeds of that sale should be distributed to registered users of Microsoft products. Their proprietary formats, and API's should be opened to those registered users. Perhaps then some semblance of a level playing field might be restored.

Microsoft's Bill Gates should also be required to publicly state that his company repeatedly broke the law using deception as a policy. As it stands, the majority of the public still believes as he does, that they've "done nothing wrong" and that the court has no place in the matter.
This is tragic.

Thank you for your time.

Sincerely,

Mark Hotchkiss